

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

No. 07-4889 MHP

D. BRIAN F. BARTOLOME,

Plaintiff(s),

vs.

DOES 1 - 10 IN THEIR OFFICIAL CAPACITY,

Defendant(s).

**ORDER DENYING IN
FORMA PAUPERIS
FILING AND
DISMISSAL OF
COMPLAINT**

Plaintiff filed this action on September 20, 2007 alleging at least seventeen different causes of action ranging from child abuse to violations of the Geneva Convention to intellectual property claims and violations of the disability laws. He names no defendants, except Does 1-10 in their official capacity. In the body of the complaint he provides a laundry list of seventy-four offenses from assault to witness tampering, apparently taking many of them from the list of criminal offenses contained in a penal or criminal code with a few curious ones thrown in, such as "Pride-and-Ego Down", "Sensory Deprivation" and "Good Cop/Bad Cop". There are no facts alleged just rambling incoherencies suggesting he expects a sealed court proceeding in which the court conducts sweeping investigations into an array of activities which are not made all that clear by the complaint.

The court notes, and plaintiff acknowledges, that plaintiff is no stranger to the courts having filed at least twenty-three actions in various federal district courts. Plaintiff also admits that he has filed at least fifteen cases in state court. In fact, on the date plaintiff filed this complaint he filed two

1 other actions in this district.

2 The complaint in this case is incomprehensible. Despite the recitation of a list of violations
3 and offenses there is nothing that tells the court the nature of each, or any of the claims. Plaintiff
4 provides no short and plain statement of any claim or a statement as to what relief he may be entitled
5 to. Plaintiff states no basis for a cognizable federal claim.

6 The district court may deny in forma pauperis status and dismiss a complaint sua sponte if
7 federal subject matter jurisdiction is lacking or if the complaint is frivolous. See 28 U.S.C.
8 §1915(e)(2). A complaint is frivolous if "it lacks an arguable basis either in law or in fact." Neitzke
9 v. Williams, 490 U.S. 319, 325 (1989)(found to be superseded on other grounds by reason of
10 adoption of section 1915(e) which makes dismissal for failure to state a claim mandatory), see, e.g.,
11 Lopez v. G.A.Smith, 203 F.3d 1122, 1126 (9thCir.2000); Cruz v. Gomez, I/O, 202 F.3d 593, 596
12 (2dCir.2000).


13 Where a complaint fails to state "any constitutional or statutory right that was violated, nor
14 asserts any basis for federal subject matter jurisdiction", there is no "arguable basis in law" under
15 Neitzke and the court on its own initiative may decline to permit the plaintiff to proceed and dismiss
16 the complaint under section 1915(d). Cato v. United States, 70 F.3d 1103, 1106 (9th Cir. 1995).

17 Furthermore, where the complaint alleges facts that are "clearly baseless", "fanciful", or
18 "delusional" it may be dismissed as frivolous. Denton v. Hernandez, 504 U.S. 25, 112 S.Ct. 1728,
19 1733 (1992)(also found superseded in that dismissal was within discretion of district court under
20 section 1915(d)) and now, under section 1915(e)(2) dismissal is mandatory, see Cruz v. Gomez, 202
21 F.3d at 596. If the pro se plaintiff can cure the factual allegations in order to state a claim, the court
22 may give him or her leave to do so. However, if repleading cannot cure the deficiencies the court
23 may dismiss without leave to amend and even dismiss with prejudice. See Cato v. United States, 70
24 F.3d at 1106.

1 The court fails to see how plaintiff could state any claim that would amount to a plausible
2 claim or one over which the court would have jurisdiction. Therefore, the application to file in
3 forma pauperis is DENIED and the complaint is DISMISSED.

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5 IT IS SO ORDERED.

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8 Date: January 9, 2008


MARILYN HALL PATEL
Judge
United States District Court
Northern District of California